IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE C.V.RAMULU**

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**WRIT PETITION NO : 5445 of 1998**

Between:

1. Superintending Engineer, TBP HLC Circle Anantapur.
2. The Executive Engineer,ID Dharmavaram Canal Division Anantapur.

**..... PETITIONERS**

AND

1 Kum D.Lalitamma,
D.No.8/286 Court Road, Anantapur.
2 Chairman Cum presiding Officer, Labour Court, Anantapur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of mandamus declaring the award issued I.D.No.79/95 dt.24-9-97 by the 2nd respondent as unconstitutional, illegal, arbitrary contrary to Industrial Dispute act and contrary to principles of natural justice and also in deviation to the orders issued by Hon'ble Supreme Court that state is not industry so Irrigation Department is also not an industry in this regard I.D. Act is not applicable. Hence the order passed by Labour Court in ID.No.79/95 is liable to be set aside by holding that the 1st respondent is not entitled to any relief.

**Counsel for the Petitioners: GP FOR IRRIGATION & COMM AREA DEVP.**

**Counsel for the Respondent No.1: MR.B.G.RAVINDER REDDY**

**Counsel for the Respondent No.2: None appeared**

**The Court made the following:**

O R D E R:

This writ petition is filed by the petitioners seeking Writ of Mandamus declaring the award passed by the Industrial Tribunal-cum-Labour Court, Ananthapur, in I.D.No.79 of 1995, dated
24-09-1997, as arbitrary and illegal.

The first respondent herein filed a claim petition before the Industrial Tribunal-cum-Labour Court, Ananthapur under Section 2(A) 2 of the Industrial Disputes Act (for short "the Act") in which it is stated that she joined as a Job Typist in the office of the second petitioner herein i.e., The Executive Engineer ID., Dharmavaram Canal Division, Ananthapur, w.e.f 21-03-1990 on consolidated salary. She discharged her duties continuously and served for more than 240 days. The post, in which, she was working was a clear vacant post. Though she served for more than three years, the management has not regularized her services. Initially, she was paid Rs.350/- per month and thereafter the second petitioner enhanced her pay to Rs.650/- per month with retrospective effect from the date of her appointment. Further, on her request, the first petitioner enhanced the pay to Rs.940/- per month and recommended her case to the Chief Engineer and the Engineer-in-Chief for regularization of her services. While so, her services were terminated w.e.f. 23-11-1993. The establishment of the management was part and parcel of Irrigation Department, Government of Andhra Pradesh and, as such, it was an industry under Section 2(J) of the Act. Since the first respondent was not employed in the managerial or administrative capacity and was drawing less than Rs.1,600/- per month, she was a workman as defined under Section 2(S) of the Act. Therefore, her termination amounts to retrenchment under Section 2(O) of the Act and the same was in violation of Section 25(F) and (G) of the Act and the Rules made thereunder. Therefore, she requested the Tribunal to direct the management to reinstate her into services with continuity of service,

full back wages and other attendant benefits.

The second petitioner herein filed a rejoinder before the Tribunal which was adopted by the first petitioner.

MW-1, Sri J.Gangadhara Sastry, who was examined as the management witness deposed before the Tribunal that since 21-03-1990 the first respondent was engaged as a Typist on agreed remuneration without cuts every month till she was disengaged. There is no dispute with regard to her engagement on 21-03-1990, and disengagement on 23-11-1993. The services of the first respondent were engaged as a Job Typist. It is not the case of the management that she has resigned and went away and it is also not their case that she was not entitled to and qualified to work as a Typist. MW-1 admitted that they supplied stationery, type-writer ribbons etc., to the first respondent and she used to attend the typing work in the office. By taking into consideration the above facts, the Tribunal came to the conclusion that the first respondent-workman was put in service for more than 240 days preceding the date of her disengagement, and therefore, the management had violated the provisions of Section 25(F) of the Act.

The learned Counsel for the petitioners contended that the very claim petition before the Tribunal was not maintainable since no appointment order was given by the management. The law is well settled that the Department of Irrigation is an 'Industry' within the meaning of the Act. The first respondent was not appointed under the Rules made under Article 309 of the Constitution of India and was not paid the salaries attached to the said post. She was only working as a contingent staff. Therefore, it cannot be said that the first respondent was not a workman within the meaning of the Act. Therefore, this point need not be dealt with at length.

In so far as the finding on Section 25(F) of the Act, there is no dispute. Even according to MW-1, the first respondent worked for more than 240 days preceding the date of her disengagement as a Job Typist. Therefore, the Tribunal rightly came to the conclusion that

the management had violated the provisions of Section 25(F) of the Act. If really there was no work or if the petitioners wanted to get rid of the services of the first respondent, they could have invoked the provisions of Section 25(F) of the Act by paying one month salary and also the compensation, if any, she was entitled to. Such a course was not adopted by the petitioners. Therefore, the finding of the Tribunal that the termination of the first respondent-workman was contrary to the provisions of Section 25(F) of the Act, cannot be found fault with. The Tribunal rightly directed the petitioners to reinstate the first respondent-workman into service with continuity of service and attendant benefits, but without back wages by declaring her termination, as bad in law. I see no reason to interfere with the award of the Tribunal.

Accordingly, the writ petition is dismissed. No costs.

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28-07-2004.

Lrkm.

…….. REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman-cum-Presiding Officer, Labour Court, Ananthapur.
2. The Superintending Engineer, TBP HCL Circle, Anantapur.
3. The Executive Engineer, ID Dharmvaram Canal Division, Anantapur
4. 2 CCs to The Government Pleader for Irrigation and Command Area Development, High Court Buildings, High Court of A.P., Hyderabad.(O.U.T)
5. 2CD copies.